

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

PAUL SUGAR, Jr., and
PAUL SUGAR, Sr.

Plaintiffs,

vs.

No. 1:20-cv-0331-KWR-LF

DAVID TACKETT,
STEVE TACKETT and
NO. 8 MINE, LLC, a Delaware
Limited Liability Company,

Defendants.

**ORDER NUNC PRO TUNC ALLOWING FILING OF
DEFENDANT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW AND
ORDER REGARDING COMMUNICATION WITH THE COURT**

THIS MATTER came before the Court upon Defendant's e-mail communications with the Court regarding the submission of his proposed findings of fact and conclusions of law.

THE COURT HEREBY FINDS:

1. The Court entered the Order Setting Pretrial Deadlines (**Doc. 90**) on **February 16, 2022** directing the parties to file their proposed findings of fact and conclusions of law within thirty (30) days of the post-trial filing of the transcript.
2. Both volumes of the transcript were filed on **Monday, July 25, 2022**.
3. Proposed findings of fact and conclusions of law were due on **Wednesday, August 24, 2022**.
4. On **Wednesday, August 24, 2022**, at approximately 8:20 p.m. local time, Defendant, David Tackett (hereinafter "Defendant") sent an e-mail communication to chambers and attached his proposed findings of fact and conclusions of law as a PDF document. *See Attachment A.*

5. Defendant did not file his proposed findings of fact and conclusions of law with the Clerk's Office on or before the specified due date of **Wednesday, August 24, 2022**, but has attempted to circumvent the filing deadline by communicating directly with the Court and attempting to utilize e-mail as a means of electronically filing his document.

6. Generally, *pro se* litigants are held to the same standards of professional responsibility as trained attorneys. It is a *pro se* litigant's responsibility to become familiar with and to comply with the *Federal Rules of Civil Procedure* and the *Local Rules of the United States District Court for the District of New Mexico* (hereinafter the "Local Rules"). Guide for Pro Se Litigants at 4, United States District Court, District of New Mexico (November 2019).¹

"Attorneys and *pro se* parties are prohibited from all *ex parte* communication with the judge or judge's staff." See Guide for Pro Se Litigants at 11 (emphasis added). *Ex parte* communication occurs when one of the parties to a lawsuit exchanges information with the assigned judge (1) without the opposing party being present, or (2) without the knowledge and consent of the opposing party. *Id.* Therefore, "[a]ny communication between the assigned judge and a *pro se* litigant should be in writing, and a copy of the communication should be sent to the opposing party or, if represented, to that party's attorney." *Id.* "The letter to the judge should indicate that a copy has been sent to the opposing party. Telephone or personal contact with the judge's staff should be limited to specific scheduling inquiries." *Id.* at 11–12.

Unless otherwise directed, all communication to the court should be addressed to the Clerk of Court, United States District Court, District of New Mexico, using the address for the division [Albuquerque, Las Cruces or Santa Fe] where the subject case has been assigned. Guide for Pro Se Litigants at 5 (providing the Albuquerque, Las Cruces and Santa Fe addresses).

¹ The Local Rules, the Guide for Pro Se Litigants and a link to the Federal Rules of Civil Procedure are also available on the Court's website (<http://www.nmd.uscourts.gov> under the "Pro Se" tab).

7. Defendant's e-mails to Judge Riggs' chambers constitute improper *ex parte* communication. Furthermore, Defendant has failed to comply with the Local Rules for properly filing his proposed findings of fact and conclusions of law for consideration and ruling upon by the Court.

IT IS THEREFORE ORDERED THAT:

1. The Court **GRANTS** Defendant *nunc pro tunc* relief and will allow his proposed findings of fact and conclusions of law, which would otherwise be considered filed untimely, to be filed electronically by the Clerk's Office and treated as timely filed upon entry of this Order. Defendant's e-mail communications with the Court will be included as an attachment (**Attachment A**) to this Order for transparency purposes.

2. The Court **GRANTS** Defendant permission to file electronically **in this case only**. *See* Guide for Pro Se Litigants at 13, District of New Mexico (November 2019) ("approval to electronically file documents within a case must be granted by the presiding judge for each case in which the *pro se* litigant wishes to file using their CM/ECF account"). The Court will revoke permission to file electronically if Defendant abuses his electronic filing privilege or fails to comply with the rules and procedures in the District of New Mexico's Guide for Pro Se Litigants and the District of New Mexico's CM/ECF Administrative Procedures Manual.

Account registration forms, procedure manuals, and other information can be obtained at the Court's website at <http://www.nmd.uscourts.gov/filing-information>. This Order only grants Defendant permission to participate in CM/ECF; Defendant is responsible for registering to become a participant. *See* CM/ECF Administrative Procedures Manual, District of New Mexico (Revised December 2019).

3. Defendant is **PROHIBITED** from communicating directly with the Court via email or any other method not expressly provided for in the Local Rules or the Court's orders.

IT IS SO ORDERED.



KEA W. RIGGS
UNITED STATES DISTRICT JUDGE

Vince Espinoza

From: David Tackett <coinedwealth@gmail.com>
Sent: Thursday, August 25, 2022 9:37 AM
To: Vince Espinoza
Subject: Re: Defendant's Proposed Findings of Fact and Conclusions of Law - CV-20-331 (Sugar et al v. Tackett et al)

CAUTION - EXTERNAL:

Mr. Espinoza,

Thank you for your response. This is the same way that I have sent everything in the past. Having sent it, and showing through email that it was submitted on the same date that it is due should be sufficient, correct? The opposing party shouldn't be allowed more time to complete their filing simply because they can e-file on the day of. It wouldn't be fair to a pro-se litigant to say their filings must be completed days in advance to allow time for it to get there.

My email wasn't asking for you or the court to file on my behalf, but to provide a copy of what was submitted on the due date to show that it was completed on time and to provide a tracking number as proof that it was submitted.

I would be very grateful if you can confirm with Judge Riggs if this is acceptable, because it's exactly what I have done in the past and with the Arizona court. If you are able, please give me a call.

Thank you,
David Tackett
602-393-8995

On Aug 25, 2022, at 8:14 AM, Vince Espinoza <Vincent_Espinoza@nmd.uscourts.gov> wrote:

Good Morning, Mr. Tackett:

Please call the Clerk's Office at (505) 348-2000 to inquire about setting up an e-file account. Unfortunately, the Court or staff cannot e-file documents on a behalf of a party. I will ask Judge Riggs what course of action she would like for me to take in this instant situation since the deadline to file your proposed findings and conclusions has passed.

Always Authentically Yours:

Vincent "V" Espinoza

Vincent "V" Espinoza, MJM, LMSW, LSAA, CTMHP (he/they/él/elle)
Judicial Assistant to the Honorable Kea W. Riggs, U.S. District Judge
U.S. District Court, District of New Mexico
Phone No.: (505) 348-2351
Fax No.: (505) 348-2355
E-mail Address: Vincent_Espinoza@nmd.uscourts.gov
Chambers E-mail Address: RiggsChambers@nmd.uscourts.gov

Chambers Proposed Text E-mail Address: riggsproposedtext@nmd.uscourts.gov

From: David Tackett <coinedwealth@gmail.com>

Sent: Wednesday, August 24, 2022 8:20 PM

To: Vince Espinoza <Vincent_Espinoza@nmd.uscourts.gov>; NMDml_Judge Riggs's Chambers
nmd.uscourts.gov <RiggsChambers@nmd.uscourts.gov>; Angelo Artuso <angelo@nmliberty.com>

Subject: Defendant's Proposed Findings of Fact and Conclusions of Law - CV-20-331 (Sugar et al v. Tackett et al)

CAUTION - EXTERNAL:

Honorable Judge Riggs and Mr. Espinoza,

I respectfully submit the attached, Defendant David Tackett's Post-Trial Proposed Findings of Fact and Conclusions of Law. I mailed it with UPS today since I do not have e-filing privileges and I do not live in New Mexico. It was sent UPS 2nd Day Air A.M., tracking number: 1Z4AR8820735055807.

I wanted to email it to you as well so that you have it on the day it is due.

Thank you,
David Tackett

CAUTION - EXTERNAL EMAIL: This email originated outside the Judiciary. Exercise caution when opening attachments or clicking on links.

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